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WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

SUSAN LAWRENCE,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION;
and DOES 1 to 20,

Defendant.

Case No.

**DEFENDANT COSTCO WHOLESALE
CORPORATION'S NOTICE OF
REMOVAL**

Defendant, COSTCO WHOLESALE CORPORATION ("COSTCO"), pursuant to 28 U.S.C. Sections 1332, 1441 and 1446, hereby gives notice of the removal to this Court of the case styled, Susan Lawrence v. Costco Wholesale Corporation, and Does 1 to 30, inclusive, filed in the Superior Court of the State of California, County of Fresno, Case No. 22CECG00793 ("the Case").

As grounds for this removal, COSTCO states the following:

I.
BACKGROUND

A. Plaintiff's Complaint

1. On March 15, 2022, Plaintiff, SUSAN LAWRENCE ("Plaintiff"), filed her complaint ("the Complaint") against COSTCO in the Case. A copy of the Complaint is attached as Exhibit "A".

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1 2. On April 5, 2022, COSTCO received the Complaint and Summons, via service upon
2 its Agent for Service of Process, CT Corporation.

3 3. Plaintiff alleges that on September 22, 2019, Plaintiff was injured when she fell at
4 the COSTCO warehouse, located in Fresno, California. Ex. A, p.4.

5 **B. The Amount in Controversy**

6 4. Plaintiff claims to have suffered damages in the form of wage loss, hospital and
7 medical expenses, general damage, loss of earning capacity and all other economic and non-
8 economic damages known and unknown, subject to proof at the time of trial. Ex. A., p.3, ¶ 11.

9 5. On June 30, 2022, Plaintiff served her Response to Form Interrogatories, Set One. A
10 copy of Plaintiff's June 30, 2022 Response to Form Interrogatories, Set One, is attached hereto as
11 Exhibit "B." Plaintiff's Responses to Form Interrogatories, Set One, asserts that Plaintiff has
12 incurred a total of \$138,347.20, to date, in itemized medical expenses (Response to Form
13 Interrogatory No. 6.4, p. 12-14), and \$85,560.00 in lost wages (Response to Form Interrogatory No.
14 8.7, p. 17-18), due to the aforementioned September 22, 2019, incident at COSTCO. Ex B, Response
15 to Form Interrogatories 6.4 and 8.7. As of June 30, 2022, Plaintiff claims her total damages to be
16 \$223,907.20, plus other damages subject to proof at the time of trial.

17 **C. The Parties' Citizenship**

18 6. Based upon Plaintiff's June 30, 2022 Response to Form Interrogatories, Set One,
19 propounded to by COSTCO, Plaintiff was a citizen and resident of the County of Fresno on
20 September 22, 2019; based upon Plaintiff's June 30, 2022 Response to Form Interrogatories, Set
21 One, Plaintiff was a citizen of California and resident of the County of Fresno, California when she
22 filed the Complaint on March 15, 2022; and based upon Plaintiff's June 30, 2022 Response to Form
23 Interrogatories, set one, Plaintiff is a citizen of California and resident of the County of Fresno,
24 California at the time of filing this Notice of Removal.

25 7. Defendant COSTCO was on September 22, 2019, and on March 15, 2022, when
26 Plaintiff filed the Complaint, a Washington Corporation with its principal place of business in
27 Issaquah, Washington; and COSTCO is at the time of filing this Notice of Removal, a Washington
28 Corporation with its principal place of business in Issaquah, Washington.

II.
COMPLETE DIVERSITY OF CITIZENSHIP EXISTS BETWEEN THE PARTIES

8. A corporation is a citizen of its state of incorporation and the state in which its principal place of business is located. 28 U.S.C. § 1332(c)(1); Hertz Corp. v. Friend, 559 U.S. 77, 80 (2010). A corporation's principal place of business is ". . . the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's 'nerve center.'" Id. at 92-93. The "nerve center" is usually its headquarters. Id.

9. Based upon information and belief, Plaintiff was a citizen of California at the time of the September 22, 2019 incident, Plaintiff was a citizen of California at the time of filing the Complaint, and is a citizen of California at the time of the filing of this Notice of Removal.

10. Defendant COSTCO was on September 22, 2019, and on March 15, 2022, when Plaintiff filed the Complaint, a Washington Corporation with its principal place of business in Issaquah, Washington, and COSTCO is at the time of filing this Notice of Removal a Washington Corporation with its principal place of business in Issaquah, Washington.

11. Thus, complete diversity of citizenship exists between the parties pursuant to 28 U.S.C. Section 1332(a)(1).

III.
THE AMOUNT IN CONTROVERSY WELL EXCEEDS \$75,000

12. The Complaint does not allege a total amount in controversy, except that it is an unlimited civil case. However, Plaintiff provided an "other paper" as per 28 U.S.C. Section 1446(b)(3), wherein Plaintiff has asserted in her June 30, 2022 Response to the Form Interrogatories, set one, propounded by COSTCO, that her total damages, to date, amount to \$223,907.20, plus other damages subject to proof at the time of trial. Accordingly, the amount in controversy in this case is in excess of \$75,000 pursuant to 28 U.S.C. Section 1446(c)(2).

IV.
COSTCO TIMELY REMOVED UNDER 28 U.S.C. § 1446(B)(3)

13. Defendant COSTCO has timely removed this action to the United States District Court for the Eastern District of California.

1 14. The Complaint and Summons were served upon Costco's Agent for Service of
2 Process on April 5, 2022. Pursuant to 28 U.S.C. Section 1446(b)(1), Defendant COSTCO has thirty
3 (30) days within which to file its Notice of Removal, however, Plaintiff's March 15, 2022
4 Complaint, did not state an amount in controversy, and therefore, an amount in controversy was not
5 ascertainable.

6 15. It was not until Plaintiff served her Response to Form Interrogatories, Set One, on
7 June 30, 2022, that an amount in controversy, greater than \$75,000, could be ascertained. Pursuant
8 to 28 U.S.C. Section 1446(c)(3)(A), responses to discovery shall be treated as an "other paper" under
9 28 U.S.C. Section 1446(b)(3), which provides, in pertinent part:

10 "If the case stated by the initial pleading is not removable, a notice of removal may be filed
11 within thirty days after receipt by the defendant, through service ..., a copy of an ... other paper
12 from which it may first be ascertained that the case is one which is or has become removable."

13 16. Since removal of the Case did not first become ascertainable until Plaintiff served
14 her Responses to Form Interrogatories, Set One, on June 30, 2022, COSTCO now has thirty (30)
15 days from service of Plaintiff's Responses to Form Interrogatories, Set One, to file its Notice of
16 Removal. 28 U.S.C. § 1446(b)(3).

17 17. In compliance with 28 U.S.C. Section 1446(b)(3), COSTCO'S deadline to file it
18 Notice of Removal is July 30, 2022.

19 18. Since on June 30, 2022, it first became ascertainable that the case was removable,
20 and since COSTCO has filed its Notice of Removal, on or before, July 30, 2022, COSTCO has
21 timely removed this action to the United States District Court for the Eastern District of California.

22 **V.**
23 **DEFENDANT HAS COMPLIED WITH THE PROCEDURAL REQUIREMENTS FOR**
24 **REMOVAL**

25 19. Defendant attaches, as Composite Exhibit "C," all other process, pleadings and
26 orders obtained by it not otherwise specifically referenced herein, pursuant to 28 U.S.C. Section
27 1446(a).

28 20. Venue properly rests in the Fresno Division of the United States District Court for
the Eastern District of California, pursuant to 28 U.S.C. Section 1441(a) and Local Rule 120(d),

1 since this action is being removed from the state court wherein it was originally filed in the Superior
2 Court of the State of California, Fresno County.

3 21. Defendant will file with the Clerk of the Court for the Superior Court of the State of
4 California, Fresno County, a copy of this Notice of Removal pursuant to 28 U.S.C. Section 1446(d),
5 and will give written notice thereof to all adverse parties.

6 WHEREFORE, Defendant, COSTCO, hereby serves notice of the removal of this action to
7 the United States District Court for the Eastern District of California.

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9 Dated: July 27, 2022

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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11 By: /s/Gregory S. Mason
12 Gregory S. Mason
13 Attorneys for Defendant COSTCO WHOLESALE
CORPORATION

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